

REMARKS

This is in full and timely response to the Office Action dated February 18, 2009.

Claims 1, 4-7, and 10 are currently pending in this application, with claims 1 and 7 being independent.

No new matter has been added.

Reexamination in light of the following remarks is respectfully requested.

Entry of amendment

This amendment *prima facie* places the case in condition for allowance. Alternatively, it places this case in better condition for appeal.

Accordingly, entry of this amendment is respectfully requested.

Prematureness

Applicant, seeking review of the prematureness of the final rejection within the Final Office Action, respectfully requests reconsideration of the finality of the Final Office Action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

At least for the following reasons, if the allowance of the claims is not forthcoming at the very least and a new ground of rejection made, then a new non-final Office Action is respectfully requested.

New grounds of rejection

Paragraph 2 of the non-final Office Action mailed on September 3, 2008 has **failed** to include a rejection of either original claim 3 or original claim 7.

The Amendment in Response to Non-Final Office Action filed on December 3, 2008 wholly incorporated the features of claim 3 into claim 1 to form amended claim 1.

No other amendment to claim 1 is found within the Amendment in Response to Non-Final Office Action.

As a result of this amendment, **originally-filed claim 3 is now finally rejected claim 1**.

Moreover, the Amendment in Response to Non-Final Office Action filed on December 3, 2008 wholly incorporated the features of claim 9 into claim 7 to form amended claim 7.

No other amendment to claim 7 is found within the Amendment in Response to Non-Final Office Action.

As a result of this amendment, **originally-filed claim 9 is now finally rejected claim 7**.

Nevertheless, paragraph 2 of the Office Action cites International Application Publication No. WO 2004/034391 (Kouchiyama'391) in the rejection of claims 1, 4-7, and 10. Claim 1 is originally-filed claim 3 and claim 7 is originally-filed claim 9.

Thus, the new rejection of claims 1 and 7 made within the Final Office Action is a new ground of rejection that was **neither necessitated by applicant's amendment** of claim 1 within the Amendment in Response to Non-Final Office Action filed on September 3, 2008 **nor based on information submitted in an information disclosure statement**.

Accordingly, the finality of the rejection of claims 1 and 7 made within the Final Office Action is **premature** at least for this reason.

Claim rejections

Paragraph 2 of the Office Action indicates a rejection of claims 1, 4-7 and 10 under 35 U.S.C. §103 as allegedly being unpatentable over Japanese Application Publication No. 2003-315998 (Kouchiyama'988) or International Application Publication No. WO 2004/034391 (Kouchiyama'391) in view of U.S. Patent No. 4,786,538 (Saito), U.S. Patent No. 4,916,048 (Yamada), and Japanese Application Publication No. 2001-344826 (Lee).

This rejection is traversed at least for the following reasons.

Kouchiyama'391 is in the national stage (35 U.S.C. 371) of an International Application filed on or after November 29, 2000 and which was not published in English under PCT Article 21(2).

As a rule, according to 35 U.S.C. 102 (e), no benefit of the international filing date (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102 (e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. See M.P.E.P. §706.02(f)(1).

The above-identified application is entitled to benefit of the filing date for Japanese Patent Application No. 2003-401836 of December 1, 2003.

Kouchiyama'391 has a publication date of April 4, 2004.

In this regard, the filing date for Japanese Patent Application No. 2003-401836 of December 1, 2003 is earlier than the publication date of April 4, 2004 for Kouchiyama'391.

Thus, the Kouchiyama'391 appears to be unavailable as prior art and that the rejections of the claims using this reference should be withdrawn as a result.

Withdrawal of this rejection is respectfully requested.

Official Notice

There is no concession as to the veracity of Official Notice, if taken in any Office Action.

An affidavit or document should be provided in support of any Official Notice taken. 37 CFR 1.104(d)(2), MPEP § 2144.03. See also, *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989)(failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error).

Extensions of time

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

Fees-general authorization

The Commissioner is hereby authorized to charge any deficiency in fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm).

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Conclusion

This response is believed to be a complete response to the Office Action.

Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance.

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: March 31, 2009

Respectfully submitted,

By  40,291

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